

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Midwest Independent Transmission)	Docket No.	ER04-571-000
System Operator, Inc.)		
and)		
Ameren Services Company)		

**MOTION FOR LATE INTERVENTION
AND CLARIFICATION
OR, ALTERNATIVELY,
REQUEST FOR REHEARING
OF THE
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rules 212, 214 and 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §385.212, 385.214, 385.713, the Illinois Commerce Commission (“ICC”) hereby respectfully submits this motion for late intervention and clarification, or, alternatively, request for rehearing of the Commission’s Order Accepting Service Agreement for Filing, *Midwest Independent Transmission System Operator Inc.*, and *Ameren Services Company*, 106 FERC ¶ 61,293 (2004), issued March 25, 2004, in the above-captioned proceeding.

I. Background

On February 19, 2004, Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) and Ameren Services Company (“Ameren”) (collectively, “Applicants”) jointly filed, pursuant to Section 205 of the Federal Power Act, an executed Agreement for the Provision of Transmission Service to Bundled Retail Load

(“Service Agreement”) between the Midwest ISO and Ameren, as agent for Union Electric Company, d/b/a AmerenUE (“AmerenUE”). The Service Agreement results from the Missouri Commission proceeding in which Ameren, on behalf of AmerenUE, sought authorization for AmerenUE to participate in GridAmerica and Midwest ISO.

On March 25, 2004, the Commission issued an Order accepting the proposed Service Agreement for filing, to become effective on May 1, 2004, as requested by the Applicants (hereafter, “March 25 Order”).¹ The ICC now moves to intervene out of time in order to seek clarification on an issue arising out of the March 25 Order.

II. Motion to Intervene

The ICC is a State Commission as defined in Section 1.101(k) of the Commission’s Rules of General Applicability, 18 C.F.R. §1.101(k). The principal place of business of the ICC is 527 East Capitol Avenue, Springfield, IL 62701. As the state regulator of public utilities in Illinois, the ICC has an interest that may be directly affected by the outcome of the proceeding, and its participation is in the public interest. As such, no other party can adequately represent ICC interests in this proceeding.

The ICC does not seek to disrupt the proceeding. Rather, we seek merely to clarify the record where ambiguity may exist. In numerous instances throughout the March 25 Order, the Commission refers to AmerenUE’s “bundled retail load” (for example, Paragraphs 9 and 21). However, it does not make a distinction between AmerenUE’s provision of retail service in Missouri and Illinois. The Service Agreement at issue in this proceeding has not been before the ICC and has not been approved by the ICC. The ICC seeks clarification that the Commission’s March 25 Order and the Service

¹ *Midwest Independent Transmission System Operator Inc., and Ameren Services Company*, 106 FERC ¶ 61, 293 (2004).

Agreement approved by that Order do not apply to AmerenUE's retail service in Illinois and does not bind the ICC. We do not believe that this is an issue in controversy, but we would like to clear up any ambiguity that may exist. Therefore, we believe that good cause exists to grant this motion.

The names, titles and business addresses of the persons designated for service pursuant to Rule 2010(c)(1) of the Commission's Rules of Practice and Procedure are as follows:

Randy Rismiller
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III. Motion for Clarification, or Alternatively, Request for Rehearing

The Commission's March 25 Order described the Applicants' proposed Service Agreement as follows:

The Service Agreement establishes a framework for Midwest ISO to provide transmission service to AmerenUE under the Midwest ISO open access transmission tariff (OATT), for service to AmerenUE's bundled retail load, during a five and a half year transition period commencing May 1, 2004. AmerenUE will not pay the license plate zonal transmission rate set forth in Schedule 9, Network Integration Transmission Service, of the Midwest ISO OATT, or the ancillary service rates in Schedules 1 through 6 of the Midwest ISO OATT, for service to its bundled retail load, provided that AmerenUE will be obligated to pay Midwest ISO for any transmission services and ancillary services that AmerenUE requires to serve its bundled retail load to the extent that AmerenUE does not provide such services itself. However, AmerenUE shall be subject to all non-price related terms and conditions under the Midwest ISO OATT applicable to transmission service that AmerenUE takes to serve its bundled retail load.²

² 106 FERC ¶ 61, 293 at P. 9.

The March 25 Order described the Commission's policy for transmission owners serving bundled retail load under an RTO tariff as follows:

The price that transmission owners and ITC participants pay to Midwest ISO becomes their cost for the transmission service used to deliver the energy they sell at retail. The Commission allows transmission owners and ITC participants to seek a rate from Midwest ISO for the transmission service purchased to deliver energy to bundled retail load equal to the transmission component of the bundled retail rates set by their state commissions. Thus, under this approach, the rate set for transmission service provided by Midwest ISO to be "re-sold" to retail load as part of bundled retail service would be the same rate set by the states for the transmission component of bundled retail sales. As we have previously stated, this must be accomplished by contract between Midwest ISO and the transmission owner or ITC participant.³

The March 25 Order found Applicants' proposed service agreement to be consistent with Commission policy stating:

We find that Applicants' proposal is consistent with this policy. AmerenUE will take transmission service under the Midwest ISO OATT to serve its bundled retail load, and shall be subject to all non-price related terms and conditions under the Midwest ISO OATT for such transmission service to serve its bundled retail load. With respect to the rates, AmerenUE's rates will reflect the transmission component of its bundled retail rate, rather than the otherwise applicable license plate zonal rates in Schedule 9 of the Midwest ISO OATT, and AmerenUE will not pay for ancillary services in Schedule 1 through 6 of the Midwest ISO OATT to the extent that it provides those services itself.⁴

The ICC respectfully requests that the Commission clarify that both its March 25 Order and the service agreement approved by that Order do not apply to AmerenUE's retail service in Illinois and does not bind the ICC. The Applicants correctly noted, "AmerenUE is a jurisdictional public utility that provides electric service to wholesale and retail customers in the States of Missouri and Illinois."⁵ However, as pointed out

³ 106 FERC ¶ 61, 293 at P. 20.

⁴ 106 FERC ¶ 61, 293 at P. 21.

⁵ Applicants' Filing Letter, at 3.

above, in numerous instances throughout the March 25 Order, the Commission refers to AmerenUE's "bundled retail load" (for example, Paragraphs 9 and 21) and does not make a distinction between AmerenUE's provision of retail service in Missouri and Illinois.

The ICC urges the Commission to clarify that its approval of the Applicants' service agreement only extends, as applicable, to the bundled electric service provided by AmerenUE to its retail customers in Missouri. The Applicants' proposed service agreement and the filing letter submitted by the Applicants on February 19, 2004 make this limited coverage clear. Applicants stated, "The Service Agreement establishes a contractual framework that allows AmerenUE to continue providing 'bundled electric service [footnote omitted] to its Missouri retail customers. . .'"⁶ Furthermore, the Service Agreement itself defines the "bundled retail load" to which the Service Agreement is applicable as "The retail electric customers of AmerenUE in the state of Missouri. . ."⁷

While the service agreement approved by the Commission in the March 25 Order applies only to AmerenUE's bundled retail load in Missouri, the ICC takes note of the Midwest ISO's statement that,

Subject to Commission approval, the Midwest ISO stands ready to offer similar agreements to other similarly situated transmission owners if so required by their state commissions, provided that such agreements do not substantively interfere with the Midwest ISO's ability to operate the transmission system and efficiently administer the energy markets.⁸

The ICC also notes the Commission's acknowledgment of this offer by the Midwest ISO.⁹

⁶ Applicants' Filing Letter, at 1.

⁷ Service Agreement, Section 1.2.

⁸ Applicants' Filing Letter, at 10.

⁹ 106 FERC ¶ 61, 293, at P. 14.

By submitting the instant Request for Clarification, the ICC is not, in any way, rejecting this Midwest ISO offer. Indeed, the ICC will consider the Midwest ISO's offer - if and when it becomes appropriate to do so. However, the ICC urges the Commission to make it explicitly clear that the service agreement submitted by Applicants on February 17th, 2004, and the Commission's March 25 Order accepting that service agreement do not apply to retail load served by AmerenUE in Illinois and that the offer extended by the Midwest ISO to state commissions remains open to the ICC.

To the extent that the Commission may have intended that the Service Agreement approved in this proceeding apply to retail load served by AmerenUE in Illinois, the ICC requests rehearing on that point for the reasons set forth above.

IV. Conclusion

WHEREFORE, as explained herein, the Illinois Commerce Commission respectfully requests that the Commission clarify that its March 25 Order directly extends only to bundled retail load served by AmerenUE in Missouri.

Respectfully submitted,

/s/ Christine F. Ericson

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April 13, 2004

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 13th day of April, 2004.

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